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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

DOAN, ROBYN KIEU

ART UNIT PAPER NUMBER

3732

DATE MAILED: 11/28/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/902,092

Applicant(s)

DE LAFORCADE, VINCENT

Examiner

Robyn Doan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 16.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-5, 7-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skarne in view of Neckermann et al (IDS cited reference).

With regard to claims 1-2, 4-5, 7-25, Skarne discloses a cosmetic compact (figs. 2-3) comprising a base (28) and a cover (26) forming at least partially of foam (col. 2, lines 1-12), a hinge (30) connecting the base and the cover and at least one recess (54) forming in the base and the recess containing a cosmetic composition or for removably holding a cosmetic applicator. In regard to claims 2, 5 and 17, Skarne shows the cosmetic substance containing within a tray (compartment 52), such the edges of the at least one recess contacting edges of the tray (fig. 3). In regard to claims 7 and 14, the hinge being integrally formed with the base and the cover and partially of foam (col. 2, lines 19-23). In regard to claim 10, the compact further having a mirror (22) and a recess (50) in the cover containing and surrounding edges of the mirror (fig. 3). In regard to claims 12-13, Skarne also shows the base and the cover having a portion of a fastener which is a snap (36) having a first portion being partially embedded within the

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cover and a second portion being partially embedded within the base (fig. 3). Skarne does not disclose a fabric covering material covering at least a portion of the foam core and defining an exterior surface of the cosmetic product, wherein the covering material comprises a material other than foam and the covering material being Lycra.

Neckermann et al discloses a container (fig. 3) having a decorative stitched exterior (fabric); the container further having a recess containing cosmetic composition (lipstick 34). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the covering material as taught by Neckermann et al into the cosmetic container of Skarne for the purpose of providing aesthetic look and it would also have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct the hinge of foam core as same with the base and the cover and also employ the Lycra material for the covering since applicant has not disclosed that such solves any stated problem or is for any particular purpose.

Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skarne in view of Neckermann et al and further in view of Gueret.

With regard to claims 3 and 6, Skarne in view of Neckermann et al disclose a cosmetic compact comprising all the claimed limitations in claims 1 and 4 as discussed above except for the cosmetic composition being directly deposited in the at least one recess. Gueret discloses a cosmetic compact (fig. 2) comprising a base (5), a cover (2), the base having at least one recess (11c) wherein the cosmetic composition (8) being directly deposited in the recess. It would have been obvious to one having an ordinary

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skill in the art at the time the invention was made to deposit the cosmetic composition directly in the recess as taught by Gueret into the compact of Skarne and Neckermann et al for the intended use purpose.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (703) 306-9182. The examiner can normally be reached on Mon-Fri 9:30-7:00; alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



Robyn Kieu Doan  
Examiner  
November 25, 2003



KEVIN SHAVER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700